



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

October 27, 1994
AO-94-37

Mr. John Woodward
54 Lake Shore Drive
Hopkinton, MA 01748-2712

Re: Application of campaign finance law to town meeting matters

Dear Mr. Woodward:

This letter is in response to your September 25, 1994 letter requesting an advisory opinion regarding whether public resources may be expended to influence a town meeting vote.

In Anderson v. the City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court held that M.G.L. c. 55, the campaign finance law, prohibits the appropriation of public funds to support or oppose a referendum question. This office has advised that the prohibition applies to all expenditures made to promote or oppose a ballot question or candidate, but does not extend to expenditures made "in connection to candidates elected at, or issues which are debated in, an open forum such as a **town meeting**." (See AO-93-07, emphasis in original).

You have asked a series of related questions, each of which will be answered separately.

- (1) "Could you please provide some case law cites that demonstrate this narrow view?"¹

Chapter 55 was enacted to regulate "election financing" Anderson, 376 Mass. at 185 (emphasis added).² "Town meetings in Massachusetts have two basic functions: (1) their part in the election process, and (2) their function as the legislative arm of each Massachusetts town." Opinion of the Justices, 358 Mass. 338, 340 (1971). See also Randall & Franklin, 8A Mass. Practice (1993) sections 151-164.

¹ We assume "narrow view" refers to this office's conclusion that the prohibition against the appropriation of public funds to support or oppose a referendum question does not extend to expenditures made to influence a town meeting vote.

² Other than Anderson, we are aware of no cases interpreting c. 55 that are relevant to your inquiry.

Although town meetings play a part in the election process, the Legislature distinguishes between town meetings and town elections. See, e.g., M.G.L. c. 39, s. 10, c. 39, s. 20, and c. 41, s. 25. The Legislature did not draft c. 55 to define its applicability to "questions submitted to the voters or a town meeting" and did not in any other manner indicate that the statute was meant to restrict campaign finance activities of persons participating in town meetings. Rather, the definitions of "contribution," "expenditure" and "political committee" limit the application of these terms to campaign finance activity undertaken for the purpose of "promoting or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters" See M.G.L. c. 55, s. 1, (emphasis added). In addition, section 18(b) of the statute exempts candidates seeking to become representative town meeting members from the requirement that candidates file campaign finance reports. Therefore, the office cannot consider issues debated in a town meeting, even if such issues are resolved by secret vote, to be questions on a ballot submitted to the voters.

Moreover, since violations of c. 55 may result in the imposition of criminal penalties, the statute must be interpreted narrowly. See Weld for Governor v. Director of OCPF, 407 Mass. 761, 766 (1990). Accordingly, this office has consistently advised that "questions submitted to the voters" must appear on a ballot, prepared in anticipation of an election, in order for the provisions of chapter 55 to apply.

- (2) "Is it your opinion that the vote on any Article/question submitted to the voters at an open town meeting may legally be influenced or affected, pro or con, by taxpayer funds?"

For the reasons stated in response to your first question, chapter 55 does not prohibit the expenditure of governmental funds for materials published and disseminated in a town meeting. Such materials are not considered to be disseminated for the purpose of influencing a "question submitted to the voters." As noted below, however, other statutes may prohibit such expenditures.

- (3a) "Is there any limitation, other than budgetary, on the amount of 'public resources' . . . elected municipal officials. . . can vote to expend to promote or oppose an Article/question that will be submitted to voters at an open town meeting?"

The campaign finance law does not impose any such limits. Such expenditures must, however, be for a legitimate public purpose. See M.G.L. c. 40, s. 5.³

³ Chapter 40 sets forth the powers and duties of cities and towns. You may wish to contact the Department of Revenue's Division of Local Services for additional guidance. You can call the Division at 727-2300, or submit written correspondence to the Division at P.O. Box 9655, Boston, MA 02114-9655.

- (3b) Can appointed municipal employees make expenditures of public funds in connection with a town meeting question at their own discretion?

Chapter 55 does not regulate such expenditures.⁴

- (3c) Can municipal officials hire political consultants, purchase political advertisements, or make other expenditures advocating a position and/or requesting attendance at a town meeting to support or oppose a particular matter?

Chapter 55 does not regulate such expenditures.⁵

- (4a) "Are ordinary citizens, groups, and/or even corporations permitted to spend without legal limitation, over a town meeting matter/Article/question?"

Chapter 55 does not regulate such expenditures since they do not relate to questions on a ballot submitted to the voters. Other restrictions, of which we are unaware, not within the jurisdiction of this office, may apply to limit expenditures of certain individuals, groups, or corporations.

- (4b) "Would they need to form any political committee, to file any forms, and/or to publicly reveal the sources and/or uses of funds?"

No. Chapter 55 does not regulate the activity of individuals, groups, or corporations where such activity is directed only at influencing the decision of a town meeting.

This opinion has been rendered solely on the basis of representations made in your letter, and solely in the context of M.G.L. c. 55. As noted above, your questions regarding the propriety of an expenditures by a municipality raise issues under the laws administered by the Local Services Division of the Department of Revenue, and you might wish to contact that office at (617) 727-2300 for additional guidance.

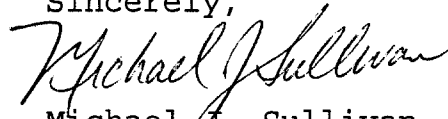
⁴ M.G.L. c. 40 limits expenditures of public funds to what has been appropriated by the town meeting. You should contact the Division of Local Services for further guidance.

⁵ M.G.L. c. 40 limits expenditures of public funds to what has been appropriated by the town meeting. Although expenditures made to inform town residents of the issues to be discussed at a town meeting appear appropriate under c. 40, the described expenditures may not be for a legitimate public purpose. You should contact the Division of Local Services for further guidance.

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Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan". The signature is written in dark ink and is positioned above the printed name and title.

Michael J. Sullivan
Director

MJS/cp